

March 13, 1998

Nomination of Frederica Massiah-Jackson

Senate to Vote Tuesday on Controversial Nominee

Frederica A. Massiah-Jackson has been nominated to be United States District Judge for the Eastern District of Pennsylvania (Ex. Cal. No. 463). The Senate will take up the nomination on Monday, March 16 at noon, followed by up to six hours of debate. On Tuesday morning, the Senate will continue the debate with two hours under the control of Senator Specter and one and one-quarter hours under the control of Senator Hatch. A vote on (or in relation to) the nomination will occur Tuesday afternoon at 2:15 p.m. (after the Policy lunch).

Nominee's Legal Background

Frederica Massiah-Jackson was graduated from the University of Pennsylvania Law School. She clerked with the Pennsylvania Supreme Court and then joined a law firm where she specialized in antitrust law and multi-district complex litigation. For two years she served as chief counsel to the Insurance and Business Committee of the Pennsylvania State Senate. In 1984 she was appointed to the Pennsylvania Court of Common Pleas, and she remains on that court to this day. She served in the criminal division until 1991 and then transferred to the civil trial division. All of the criticism of Judge Massiah-Jackson appears to arise from her work in the criminal division.

First Appearance in the Senate

President Clinton nominated Judge Massiah-Jackson to the U.S. district court last July. The Senate Committee on the Judiciary held a hearing on October 29, 1997, at which the nominee appeared. Afterwards, she answered written questions. Over the objections of Senators Thurmond, Grassley, Thompson, Kyl, Ashcroft, and Sessions, the Committee ordered her favorably reported on November 6. (There is no written report.) Twelve members of the Committee voted for her, including Senator Specter who has been an advocate. (See his statement in the *Congressional Record* of Nov. 13, "I believe Judge Massiah-Jackson should be confirmed. * * * I think in totality [that her] record is a very good one.")

Following the Committee's action, additional information surfaced and organized opposition appeared. Her opponents say that Judge Massiah-Jackson is biased against police and

prosecutors, is lenient with criminals, and lacks a judicial temperament. The opposition relies primarily on thorough background information that was prepared by the Pennsylvania District Attorneys Association. The DA Association's information was reviewed by a committee of the Philadelphia Bar Association which concluded that the first report was unbalanced and unfair. The DA Association then responded with a point-by-point rebuttal that alleges that the Bar report is biased, in part because the Bar's committee was chaired by the Judge's personal friend.

Second Appearance in the Senate

Senators Ashcroft, Grassley, and Thurmond took to the Senate floor in mid-February to elaborate on their opposition to the nominee. Thereafter, at the urging of several Senators (including Senators Santorum and Specter), the Judiciary Committee agreed to hold a second hearing. That hearing was held on March 11, 1998. Judge Massiah-Jackson appeared and answered questions for several hours. She said that her record had been "wildly distorted" and that the charges against her were untrue. In his opening statement, Chairman Hatch said:

"Since the nominee was reported out of this Committee certain allegations have been made regarding her fitness to serve as a district court judge. In addition, a bipartisan coalition of law enforcement groups, ranging from the Pennsylvania District Attorneys' Association (including the Philadelphia District Attorney's Office) to the Fraternal Order of Police and the National Association of Police Officers to the State Attorney General have all mobilized to oppose Judge Massiah-Jackson's appointment to the federal bench. It is unfortunate that we did not hear from some of these organizations sooner and that, for the most part, we were not informed of the detailed allegations until after the Committee had acted on the nomination. Still, I recognize that it was not easy for law enforcement officials to oppose a sitting judge's nomination for higher judicial office. The Committee cannot, and indeed should not, turn a blind eye to this bipartisan opposition."

Judicial Nominations Generally

The vote on the Massiah-Jackson nomination (and all judicial nominations) will take place in an environment in which the President and some Senate Democrats (especially Senator Leahy, Ranking Minority Member of the Judiciary Committee) have criticized the pace of judicial confirmations in the Senate. Sometimes, Chief Justice Rehnquist's year-end report on the judiciary is referred to. In a February 2 op-ed in *The Washington Post*, the Majority Leader addressed some of the complaints about judicial confirmations. He said:

"The pace of confirmations hasn't changed much in the Senate since 1987. That was the year Democrats regained control of the Senate and slowed the process of confirming Reagan nominees. . . . This pace continued during the Bush administration when Democrats controlled the Senate. The experience of the Robert Bork, Douglas Ginsberg,

and Clarence Thomas nominations to the Supreme Court did much to further politicize an already labor-intensive and time-consuming review process."

Opposition to the Nomination

Among the opponents of the nomination, the following three seem especially persuasive:

Lynne Abraham, District Attorney of Philadelphia

(letter of Jan. 8, 1998)

(Ms. Abraham has been the DA for 6 years; she is a Democrat)

"* * * I have carefully reviewed sentencing statistics, verdicts, courtroom testimony, newspaper and other print media reports, together with a number of other pieces of anecdotal evidence, including office memoranda. After having done so, I have concluded that I must stand opposed to this nomination.

"This decision is a difficult one because I campaigned with and served on the bench at the same time as Judge Massiah-Jackson. I firmly believe in the rule of law and the independence of the judiciary, and I would never oppose a nomination merely because of a personal disagreement with some decisions or remarks that a judge might make in the heat of courtroom arguments.

"My position on this nomination goes well beyond mere differences of opinion, or judicial philosophy. Instead, this nominee's record presents multiple instances of a deeply ingrained and pervasive bias against prosecutors and law enforcement officers — and, by extension, an insensitivity to victims of crime. Moreover, the nominee's judicial demeanor and courtroom conduct, in my judgement, undermines respect for the rule of law and, instead, tends to bring the law into disrepute.

"This nominee's judicial service is replete with instances of demonstrated leniency towards criminals, an adversarial attitude towards police, and disrespect and a hostile attitude towards prosecutors unmatched by any other present or former jurist with whom I am familiar. * * *"

Fraternal Order of Police, Philadelphia Lodge #5

(letter of Jan. 13, 1998)

"The Fraternal Order of Police, in an effort to protect and properly serve its members, has a keen interest in all jurists whose appointment could affect the safety and welfare of its Police.

"To this end, the Fraternal Order of Police is opposed to the nomination of Judge Frederica Massiah-Jackson to the United States District Court for the Eastern District of Pennsylvania.

"The reasons for this determination by the F.O.P. are that Judge Jackson has an established record of being extremely lenient on criminals; insensitive to the victims of crime; and has posed a direct threat against Police.

"Judge Jackson's bizarre rulings, coupled with her challenging and adversarial attitude toward Police and prosecutors, make it appear she is on a crusade against public safety.

"The Police have a hard enough time dealing with the felons on the street. They don't need to be worrying about the people in positions of authority placing them in more danger. Yet, that is exactly what Judge Jackson did to several Narcotics Officers in open court.

"It is an insult to the entire judicial system and the community it services when a jurist of this caliber would even be considered for an appointment to a position that could negatively affect public safety. * * *"

Pennsylvania District Attorneys Association
(press release dated Jan. 8, 1998)

"The Pennsylvania District Attorneys Association Executive Committee voted unanimously today to oppose the confirmation of Judge Frederica Massiah-Jackson for a seat on the Federal District Court for the Eastern District of Pennsylvania. The Executive Committee noted that a review of Judge Massiah-Jackson's record during her tenure as a Judge in the Criminal Court of Common Pleas in Philadelphia indicates an attitude which is unusually adversarial towards police and prosecutors. Her record also indicates a tendency to be lenient with respect to criminal defendants.

"In addition, she has shown a lack of judicial temperament with respect to vulgar language from the bench often directed at prosecutors and police. In short her comments, conduct, record, and lack of judicial temperament call into question her stature to serve as a federal judge."

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